REMARKS

Favorable reconsideration of this application, in light of the preceding amendments and following remarks, is respectfully requested.

Claims 1, 3-11, and 13-25 are pending in this application. Claims 1, 11, 13, 17, 18, and 22 are the independent claims.

Statement Under 37 C.F.R. 1.133(b)

In response to the telephonic interview conducted April 28, 2009 and the Interview Summary dated May 1, 2009, Applicant wishes to thank the Examiner for the courtesies extended during the interview. During the interview, the Padovani and Kim references were discussed. In particular, the Examiner's interpretation of the phrase "rate control scheduling mode protocol" and his assertion that the above quoted phrase from the claims was described by Kim was discussed. In supporting his rejections, the Examiner pointed to step S54 of FIG. 5 of Kim and alleged that step S54 described a rate control scheduling mode protocol.

Rejections Under 35 U.S.C. 103

Claims 1, 3-5, 7, 11, 13, 14, 17, 18, 22, and 23 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent 6,574,211 to Padovani et al. ("Padovani") in view of U.S. Patent 7,215,653 to Kim et al. ("Kim"). The Applicant respectfully traverses this rejection for the reasons detailed below.

According to the new Examination Guidelines for Determining Obviousness under 35 U.S.C. § 103 in view of the Supreme Court decision of *KSR International, Co. v. Teleflex, Inc.* it is stated that the proper analysis for a determination of obviousness is whether the claimed invention would have been obvious to one of ordinary skill in the art after consideration of all the facts. The key to supporting any rejection under

35 U.S.C. § 103 is the clear articulation of the reasons why the claimed invention would have been obvious. An Office Action must explain why the differences between the prior art and the claimed invention would have been obvious to one of ordinary skill in the art. See 72 Fed. Reg. 57526, 57528-529 (Oct. 10, 2007).

The Applicant asserts that neither Padovani nor Kim, either separately or in combination, teach or suggest all of the limitations set forth in the claims, nor has there been a clear articulation made of why the differences between the prior art and the claims would have been obvious to one of ordinary skill in the art.

Upon further review of the Kim reference, and in particular step S54 of FIG. 5 pointed out by the Examiner during the interview, the Applicant disagrees that the cited references render the claims obvious. In step S54 of Kim and in column 9, lines 40-47 of Kim, Kim describes transmission data rate adjustment information determined by the reverse link load and information regarding distance from each mobile to the base station. This is different than what is claimed. For example, claim 1 recites a method including "the scheduled grant message further establishing a rate limit for subsequent transmissions based on a rate control scheduling mode protocol."

On pages 2 and 3 of the Office Action the Examiner admits that Padovani does not disclose that the grant sent from the base station to the mobile station will establish a rate limit for later transmission from the mobile station and have a specified rate provided by the grant message and a rate control scheduling mode protocol. To cure the insufficiencies of Padovani, the Examiner cites to Kim. However, as described above, at best, Kim describes determining a data transmission rate adjustment based on a reverse link load and a distance between the mobile station and the base station. Kim does not, nor is it alleged to, teach sending scheduled grant messages. Therefore, neither Padovani nor Kim, either taken separately or in combination, teach, suggest, or otherwise render obvious a method where the

scheduled grant message further establishes a rate limit for a subsequent transmission based on a rate controls scheduling mode protocol as recited in independent claim 1 (the remaining independent claims, claims 11, 13, 17, 18, and 19 recite similar language). Because Kim does not cure the insufficiencies of Padovani, the Examiner has not set forth a *prima facie* case of obviousness for independent claim 1. Independent claims 11, 13, 17, 18, and 22 recite similar language and are patentable over the cited references for the same reasons set forth above with respect to claim 1.

Claim 6 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Padovani in view of Kim and further in view of the article entitled "Distributed Resource Allocation for DS-CDMA based Multi-media Wireless LANs," 21 October 1998, IEEE Proceedings of MILCOM 1998, pg 583-588 to Lal et al. ("Lal"). The Applicant respectfully traverses this rejection for the reasons detailed below.

Claim 6 is dependent upon claim 1 which has been shown to be patentable over the cited references for the reasons set forth above. Claim 6 is patentable at least by reason of its dependency.

Claims 8-10, 15, 16, 19-21, and 24 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Padovani in view of Kim and further in view of U.S. Patent Publication 2003/0093364 to Bae et al. ("Bae"). The Applicant respectfully traverses this rejection for the reasons detailed below.

Claims 8-10, 15, 16, 19-21, and 24 are dependent upon one of the independent claims described above. Because the independent claims are patentable for the reasons set forth above, claims 8-10, 15, 16, 19-21, and 24 are patentable at least by reasons of their dependency.

Claim 25 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Padovani in view of Kim and further in view of U.S. Patent Publication 2004/0203397 to Yoon et al. ("Yoon"). The Applicant respectfully traverses this rejection for the reasons detailed below.

Claim 25 is dependent upon claim 22. Claim 22 is patentable over the cited references for the reasons set forth above. Claim 25 is patentable at least by reason of its dependency.

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CONCLUSION

In view of the above remarks and amendments, the Applicant respectfully submits that each of the pending objections and rejections has been addressed and overcome, placing the present application in condition for allowance. A notice to that effect is respectfully requested. If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to contact the undersigned.

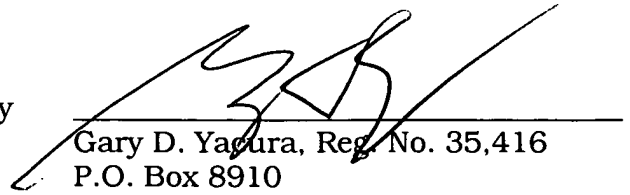
Pursuant to 37 CFR §§ 1.17 and 1.136(a), Applicants petition for a two (2) month extension of time for filing a reply to the January 9, 2009 Office Action, and submit the required $490 extension fee herewith.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact the undersigned at the telephone number below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 08-0750 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

HARNESS, DICKEY, & PIERCE, P.L.C.

By 

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